

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 UNIVERSAL PARAGON )  
11 CORPORATION and SUNQUEST )  
12 PROPERTIES, INC., ) No. C05-3100 MJJ (BZ)  
13 Plaintiff(s), )  
14 v. )  
15 INGERSOLL-RAND COMPANY )  
16 LIMITED, et al., )  
17 Defendant(s). )  
18 \_\_\_\_\_ )  
19 AND RELATED CLAIMS. )  
\_\_\_\_\_ )

**ORDER DENYING PLAINTIFF  
UNIVERSAL PARAGON CORP.'S  
REQUEST FOR AN ORDER  
COMPELLING DEPOSITION  
ATTENDANCE**

20 Before me is plaintiff Universal Paragon Corp.'s request  
21 for an order compelling the attendance of Mr. Gregory O'Hara  
22 at a deposition on January 29, 2007. Following a telephonic  
23 discovery conference at which all interested parties were  
24 represented by counsel, I find that no further briefing or  
25 argument is necessary. I conclude that I cannot issue the  
requested order.

27 Under the circumstances presented, I would normally grant  
28 plaintiff's request. In particular, I do not find persuasive

1 defendant Ingersoll-Rand Co.'s argument that Mr. O'Hara -  
2 defendant's lead trial counsel and, thus, a third party to the  
3 suit - may refuse to appear at a duly noticed subpoena,  
4 without abiding by the procedures set forth in FRCP 45, simply  
5 because he believes that his testimony may not be relevant  
6 following the resolution of summary judgment proceedings. Nor  
7 can it be that defendant's promise to produce Mr. O'Hara at  
8 such later time as it wishes excuses Mr. O'Hara's failure to  
9 appear.

10 During the conference, however, plaintiff admitted that  
11 the discovery cut-off date set by Judge Jenkins has passed.  
12 While both parties stated that they had agreed to accommodate  
13 certain discovery beyond the cut-off date, I will not enforce  
14 an agreement in derogation of Judge Jenkins' deadlines.

15 For the reasons set forth, plaintiff's request for an  
16 order compelling Mr. O'Hara's attendance at a deposition is  
17 **DENIED**.

18 Dated: January 25, 2007

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20 \_\_\_\_\_  
21 Bernard Zimmerman  
22 United States Magistrate Judge

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